IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.373 OF 2005
IN
CHAMBER SUMMONS NO. 806 OF 2004
IN
L.C.SUIT NO. 367 OF 2004

Mr.Faizal Shaikh ...Petitioner/
Ori.Plaintiff

Vs.

The Municipal Corporation
of Gr.Mumbai and Others ...Respondents

....

Mr.Sanjeev Singh Advocate for Petitioner
Mr.G.R.Mishra with Mr.G.C.Singh for Respondent No.2

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 8,2005

P.C.:

1. Heard Mr.Singh, the learned counsel for the petitioner-plaintiff. The present respondent nos. 2 to 5 had taken out Chamber Summons No. 806 of 2004 in L.C.Suit No. 367 of 2004 for being impleaded as party respondents before the City Civil Court at Mumbai and the said application after hearing the parties and considering the say filed by the plaintiff, came to be allowed by the impugned order dated 16.10.2004. The learned counsel for the petitioner submitted that the applicants were not the landlords and there was no prima facie documentary

evidence in support of their contentions regarding the said status. The trial Court committed an error apparent on the face of the record in allowing the said application.

2. The trial Court in the impugned order has noted that the applicants had filed Suit No. 4844 of 2002 against the plaintiff and BSES has also filed RAE & R. suit No.370/886 of 2002 against the plaintiff for eviction in the Small Causes Court at Mumbai and both these proceedings are pending. Irrespective of whether the plaintiff admitted the status of the applicants or not, the applicants are required to be impleaded as defendants to the suit i.e. suit no. 367 of 2004 in view of the pendency of the suits between the same parties. The trial Court also referred to deed of conveyance dated 6.12.1989 in which the lease deed dated 1.4.1975 was mentioned and it was specifically stated that Raj Mohammad Abdul Kadar and another committed various breaches of the said lease deed and therefore, it had been terminated, as a result of which, the vendor had become absolute owner of the entire suit property and entitled to sell the same to anyone including the applicants. It also noted that Mr.Mohammed Raj Gani was merely lessee in respect of the suit premises and he was not landlord of the suit premises. These are prima facie findings while allowing the application

for being impleaded as defendants and it also noted that the applicants were necessary parties. The view taken by the trial Court cannot be, by any stretch of imagination, termed to be erroneous calling for interference by this Court under Article 227 of the Constitution of India.

3. Petition is therefore, rejected summarily.

[B.H.MARLAPALLE,J.]